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STANDARDS OF AMERICAN LEGISLATION: AN ESTIMATE OF RESTRICTIVE AND CONSTRUCTIVE FACTORS. By Ernst Freund. The University of Chicago Press, Chicago, Ill. 1917. pp. xx, 327. Price \$1.50 net. Postage extra. Weight 1 lb. 10 oz.

There are only a few pieces of writing in English which can at all be compared in the scope of their subject matter with this book—Ely's *Property and Contract in its Relations with the Law*, Dicey's *Law and Public Opinion in England in the 19th Century*, Pound's essays in the *Harvard* and other law reviews. Professor Freund, however, is a pioneer in the special juristic field which he subjects to examination under the critical analysis of the newer jurisprudence, and practically he is also a pioneer in the realistic and objective method with which he treats his material. The book is a constructive criticism of the system of judge-made law and an attempt to discover the principles which lie at the base of a science of legislation. The author comes to his task armed not only with a wide knowledge of dogmatic law, but also with a thorough understanding of the history and spirit of our legal institutions, a sound appreciation of the relations of jurisprudence to ethics, economics and other social sciences, and an easy familiarity with foreign legal systems and legislation.

One finds on almost every page original and profound suggestions, fertile with practical possibilities. But the author has not made a vain parade of foot notes or bibliographical paraphernalia. Mr. Freund might easily have supplemented his book with the usual trappings of scholarship; he might have added some thousands of words and called it a treatise rather than an essay; he might have announced that he was the founder of a new method in jurisprudence. He has chosen the more modest role of an essayist. Possibly the fact that he has foregone the advantage which the mere number of pages gives to literary effort may prevent his work from receiving the attention which its excellence demands. It is sincerely to be hoped that college and university teachers, as well as the legal and general reading public, will not neglect the treasures offered in this treatise.

It is impossible to do justice to a book of first-rate importance and quality in the brief space of a review. Whether the author is pointing out the "indifferent neutrality" of the common law with its "too much justice and too little policy," or is describing the "sentimental" value of the bill of rights; whether he is indicating necessary improvements in legislative procedure, or is analyzing the adjustment of opinion and economic needs as illustrated by the history of the banking laws in the various states; whether he is describing the powers by which moral conceptions or social ideals become crystallized in constitutional provisions or statutory enactments, or is demonstrating the fact that one of the chief reasons why courts have so frequently declared social legislation unconstitutional is because they were not convinced that the legislature acted upon evidence in making the law and because counsel

in presenting such cases have usually failed to put the courts in possession of the facts which justified the legislation; whether he is criticizing English and American legal literature for its lack of an "objective estimate" of difficult legislative problems, or is attempting to suggest reasons for the strange developments of the common law of marital property,—one feels that justice can be done to Mr. Freund's work only by elaborate analysis and liberal quotation. The briefest review, however, demands that in estimating a book of this high quality, a few lines should be quoted that the reader may judge for himself the temper and spirit of the whole. Though it does not necessarily express the author's central aim any better than many others which might be quoted, it is believed that the following comparison of judge-made and legislative law is a characteristic passage: "The spirit of adjudication is after all a very different one from the spirit of legislation. Adjudication decides between contentions for the full measure of abstract rights carried to their logical conclusions, unaffected by the possible expediency of indulgence and concession, for courts deal with human relations in an atmosphere of controversy and extreme self-assertion; they touch life mainly at the point of abnormal disturbance. The function of legislation, on the other hand, is to prevent controversy, and is therefore dominated by the spirit of compromise and adjustment; it is for this reason that legislative rights are likely to be more qualified than common law rights. The result is that the principle of judicial rule or justice is the minimum, the principle of legislative rule or justice the maximum, of reciprocal concession. If so, judge-made law is ill suited for guiding legislation, and we should not look to the courts for the development of rules of legislative justice."

O. K. M.

TRADEMARKS AND TRADENAMES AND UNFAIR COMPETITION. Third Edition. By James Love Hopkins. The W. H. Anderson Company, Cincinnati, Ohio. 1917. pp. xcv. 1054. \$10.00.

The twelve years that have elapsed since the publication of the second edition have witnessed a tremendous increase in the litigation on this subject, which has had the effect of settling points formerly doubtful and unsettling those formerly well established. For this reason it might perhaps have been better had the author recast the entire work instead of trying to fit the new matter into the old text. For example, section 14 on territorial limitation opens up with the sentence "Unlike a patent, a trademark knows no territorial limitation." At the end of the section, however, we come to the case of *Hanover Star Milling Co. v. Metcalf*<sup>1</sup> and find that no one knows the territorial limits of his trademark within the United States unless he has extended its use everywhere.

The discussion of the various topics is thoughtful and instruc-

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<sup>1</sup> 240 U. S. 403, 60 L. Ed. 713, 36 Sup. Ct. Rep. 357.